


ESTTA Tracking number: **ESTTA647158**

Filing date: **12/26/2014**


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91218412
Party	Defendant Remote, Remote DBA Experts, LLC
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Date	12/26/2014
Attachments	Remote DBA Answer to Consolidated Notice of Opposition (3)_OCR.pdf(421554 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

OVERLAND STORAGE, INC.,	§	Opposition No. 91218412
	§	
Opposer,	§	
	§	Serial Nos. 85/710910 and
v.	§	85/710934
	§	
REMOTE DBA EXPERTS, LLC	§	Marks: RDX and 
	§	
Applicant.	§	

ANSWER TO CONSOLIDATED NOTICE OF OPPOSITION

Remote DBA Experts, LLC (“Applicant”), through its attorneys, hereby files its Answer to the Consolidated Notice of Opposition filed by Overland Storage, Inc. (hereinafter “Opposer”) on September 17, 2014 regarding U.S. Application Serial Nos. 85/710910 and 85/710934 for RDX and , respectively, (hereinafter “Applicant’s Marks”). Two consent motions for an extension to answer have been granted, and the deadline for this Answer is December 26, 2014. Applicant denies any allegations not expressly admitted and responds to the Consolidated Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Consolidated Notice of Opposition and therefore denies them.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 2 of the Consolidated Notice of Opposition and therefore denies them.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 3 of the Consolidated Notice of Opposition, including whether Opposer's wholly-owned subsidiary is the correct and proper owner of United States Trademark Registration No. 3,118,065 for the mark RDX. Applicant therefore denies the allegations in paragraph 3.

4. Applicant specifically denies that Opposer's registration for United States Trademark Registration No. 3,750,735 for the mark RDXPRO is incontestable, as that mark was registered February 16, 2010 and therefore has not been registered for five years and is ineligible for incontestability. Applicant is without knowledge or information sufficient to form a belief as to the truth of remaining allegations contained in paragraph 4 of the Consolidated Notice of Opposition, specifically whether Opposer's wholly-owned subsidiary is the correct and proper owner of the RDXPRO mark. Applicant therefore denies the allegations in paragraph 4.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 5 of the Consolidated Notice of Opposition and therefore denies them.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 6 of the Consolidated Notice of Opposition and therefore denies them.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 7 of the Consolidated Notice of Opposition and therefore denies them.

8. Applicant specifically denies that Opposer's registration for RDXPRO is incontestable, as that mark was registered February 16, 2010 and therefore has not been registered for five years and is ineligible for incontestability. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 8 of the Consolidated Notice of Opposition, including the alleged validity of Opposer's RDX and RDXPRO marks and their registrations, and therefore denies them.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 9 of the Consolidated Notice of Opposition, including whether Opposer's RDX and RDXPRO registrations are valid, subsisting, unrevoked, uncanceled, or not abandoned. Applicant therefore denies the allegations of paragraph 9.

10. Applicant denies the allegations in paragraph 10.

11. Applicant admits that its RDX mark, U.S. Serial No. 85/710,910, is the same as Opposer's mark RDX, U.S. Registration No. 3,118,065. Applicant denies the remaining allegations of paragraph 11.

12. Applicant admits that the filing dates of Opposer's registrations for RDX and RDXPRO predate the filing dates of the applications for Applicant's Marks.

Applicant is without knowledge or information sufficient to form a belief as to the truth of remaining allegations contained in paragraph 12 of the Consolidated Notice of Opposition, including the actual dates of first use of Opposer's RDX and RDXPRO marks, and therefore denies them.

13. Applicant denies the allegations in paragraph 12.

14. Applicant admits that it has no license, consent or permission from Opposer or its wholly-owned subsidiary to use or register Applicant's Marks, but specifically denies such license, consent or permission is needed or relevant to such use or registration.

FIRST AFFIRMATIVE DEFENSE
(No Likelihood of Confusion)

15. Applicant's Marks are used for services that are unrelated to the goods in which Opposer's marks are directed.

16. Applicant's Marks are in a different class than that of Opposer's RDX and RDXPRO marks.


16. The services associated with Applicant's Marks and the goods associated with Opposer's RDX and RDXPRO marks are not complementary and would not be purchased together.

17. The services associated with Applicant's Marks and the goods associated with its RDX and RDXPRO marks are not marketed through the same channels of trade.

18. The sophistication of customers of Applicant's services is high, as those services are expensive and critical.

19. Applicant's Marks when used for Applicant's services and Opposer's RDX and RDXPRO marks when used for Opposer's goods are unlikely to cause confusion, mistake, or deception to purchasers as to the source of Opposer's goods.

20. Applicant's Marks when used for Applicant's services are unlikely to disparage or falsely suggest a trade connection between Opposer and Applicant.

WHEREFORE, Applicant prays that the Trademark Trial and Appeal Board dismiss the Opposition and permit registration of Applicant's Marks in U.S. Application Serial Nos. 85/710910 and 85/710934 for RDX and , respectively, in the United States Patent and Trademark Office.

DATED: December 26, 2014

Respectfully Submitted,

/ Lynn J. Alstadt/
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Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been served on the following counsel of record for the Opposer via first class mail this the 26th day of December, 2014:

Jeffrey L. Van Hoosear
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614

DATED: December 26th, 2014

/Lynn J. Alstadt/
Lynn J. Alstadt